

IN RE: Rolland & Geraldine Monda)
Map 033-11-0, Parcel 59.00) Davidson County
Residential Property)
Tax Year 2005)

Statement of the Case

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$24,800	\$121,100	\$145,900	\$36,475

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on May 10, 2006, at the Davidson County Property Assessor's Office; present at the hearing were Rolland & Geraldine Monda, the taxpayers who represented themselves, and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor.

Subject property consists of a single family residence located at 109 Oaklynn Drive in Madison, Tennessee.

The taxpayer, Mr. Monda, contends that the property is worth \$135,000 based on the "average appraisal" of other homes in his area. All homes in this neighborhood, according to Mr. Monda, have lower appraisals than his. Some homes with as much or more square footage. Mr. Monda also stated that most homes in the Madison area were built in the 1950's. He purchased his home in 1962, since that time there has been an increase in crime in his area. Mr. Monda also testified, without objection, that Ms. Foster with Century 21 stated that homes in the Primrose Acres area run on the "average" at \$125,000. The taxpayer also stated that he was advised by several real estate persons that an increase of \$31,000 in value is a lot to go up in taxes.

Mr. Monda also testified that he was unaware that the swimming pool he installed at his home would be attributable to the value of his home.¹

¹ An explanation by Mr. Poling that the swimming pool was considered a "yard item" by the county produced this statement from the taxpayer.

The assessor contends that the property should be valued at \$152,100. In support of this position, five comparable sales were introduced and is marked as exhibit number 5 as part of the record in this cause.

The presentation by the taxpayer shows that a lot of time and effort were put into preparing for this hearing. The taxpayers several exhibits show that thoughtful planning and research were used in the compilation; however, the germane issue is the value of the property as of January 1, 2005.

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$145,900 based upon the presumption of correctness attaching to the decision of the Davidson County Board of Equalization.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981).

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of *Carroll v. Alsup*, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

In a more recent decision on the taxpayer's argument that the State Board could redress his grievance on "equitable" grounds, in a declaration by Administrative Judge Pete Loesch, when dealing with the same issue in *Theoda Dunn*, Henderson County, Tax Years 1999, 2000, 2001, 2002, 2003, 2004:

. . . as an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in *Trustees of Church of Christ* (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals

Commission declined to backdate a church's claim of property tax exemption under T.C.A. § 67-5-212 on the following rationale:

There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however. *Id.* at p. 2. See also Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

With respect to the issue of market value, the administrative judge finds that Mr. Monda has simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005, the relevant assessment date pursuant to T. C. A. § 67-5-504(a).

The administrative judge finds that rather than averaging comparable sales, comparables must be adjusted. As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, **but relevant differences should be explained and accounted for by reasonable adjustments.** If evidence of a sale is presented **without the required analysis of comparability**, it is difficult or impossible for us to use the sale as an indicator of value. . . . Final Decision and Order at 2. (emphasis added)

In analyzing the arguments of the Taxpayer, the administrative judge must also look to the applicable and acceptable standards in the industry when comparing the sales of similar properties as the Taxpayer did here.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.

3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
 4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable.** This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.
- Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). Andrew B. & Majorie S. Kjellin, (Shelby County, 2005)

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$24,800	\$121,100	\$145,900	\$36,475

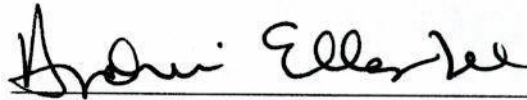
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of June, 2006.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Rolland & Geraldine Monda
Jo Ann North, Property Assessor